

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
EL DORADO IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE AMERICAN RIVER DIVISION

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7 AND  
8 EL DORADO IRRIGATION DISTRICT  
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10 FROM AMERICAN RIVER DIVISION

11 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, in  
12 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
13 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
14 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
15 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
16 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992  
17 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between  
18 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and EL  
19 DORADO IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency  
20 of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with  
21 its principal place of business in California;

22 WITNESSETH, That:

23 EXPLANATORY RECITALS

24 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
25 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
26 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
27 restoration, generation and distribution of electric energy, salinity control, navigation and other  
28 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
29 the San Joaquin River and their tributaries; and

1 [2<sup>nd</sup>] WHEREAS, the United States constructed Folsom Dam and Reservoir,  
2 hereinafter collectively referred to as the American River Division facilities, which will be used  
3 in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

4 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States  
5 pursuant to California law for operation of the Project; and

6 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
7 No. 14-06-200-1357A, as amended, which established terms for the delivery to the Contractor of  
8 Central Valley Project Water from the American River Division from January 1, 1965 through  
9 December 31, 2004 to the El Dorado Hills area (hereinafter referred to as the El Dorado Hills  
10 contract); and

11 [4.1] WHEREAS, the County of El Dorado and the United States entered into Contract  
12 No. 14-06-200-7312A, dated July 25, 1958, which established terms for the delivery to the  
13 Contractor of Central Valley Project Water from the American River Division through October  
14 31, 1999 to the Lake Hills Estate area (hereinafter referred to as the Lake Hills Estates contract);  
15 and

16 [4.2] WHEREAS, the County of El Dorado officially assigned the Lake Hills Estates  
17 contract to the Contractor on December 18, 1973, with the approval of the United States;

18 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
19 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
20 interim renewal contracts identified as Contract Nos. 14-06-200-7312A-IR1, 14-06-200-7312A-  
21 IR2, 14-06-200-7312A-IR3, 14-06-200-7312A-IR4, 14-06-200-7312A-IR5, and 14-06-200-  
22 7312A-IR6, which provided for the continued water service to the Contractor from March 1,  
23 2003 through February 29, 2004; and

24 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of  
25 interim and existing long-term Central Valley Project Water service contracts following  
26 completion of appropriate environmental documentation, including a programmatic

1 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act  
2 analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the  
3 potential renewal of all existing contracts for Project Water; and

4 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
5 environmental review necessary to provide for long-term renewal of the El Dorado Hills and  
6 Lake Hills Estates contracts; and

7 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the El Dorado  
8 Hills and Lake Hills Estates contracts, pursuant to the terms of these contracts, Federal  
9 Reclamation law, and the laws of the State of California, for water service from the Central  
10 Valley Project; and

11 [8.1] WHEREAS, Article 3(h) of Contract No. 14-06-200-7312A-IR2 states that the El  
12 Dorado Hills and Lake Hills Estates contracts will be fully integrated into one long-term renewal  
13 contract; and

14 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
15 of its obligations under the El Dorado Hills and Lake Hills Estates contracts; and

16 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
17 Contracting Officer that the Contractor has utilized the Central Valley Project Water supplies  
18 available to it for reasonable and beneficial use and/or has demonstrated projected future demand  
19 for water use such that the Contractor has the capability and expects to utilize fully for  
20 reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to  
21 this Contract; and

22 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
23 by urban and agricultural areas within California for more than fifty (50) years, and is considered  
24 by the Contractor as an essential portion of its water supply; and

25 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
26 including the Contractor's, depend upon the continued availability of water, including water

1 service from the Central Valley Project; and

2 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
3 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
4 Project for all Project purposes; and

5 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
6 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to  
7 achieve repayment of the Central Valley Project as required by law; to guard reasonably against  
8 Central Valley Project Water shortages; to achieve a reasonable balance among competing  
9 demands for use of Central Valley Project Water; and to comply with all applicable  
10 environmental statutes, all consistent with the legal obligations of the United States relative to  
11 the Central Valley Project; and

12 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
13 relationship in order to achieve their mutual goals; and

14 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
15 long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set  
16 forth below;

17 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
18 contained, it is hereby mutually agreed by the parties hereto as follows:

19 DEFINITIONS

20 1. When used herein unless otherwise distinctly expressed, or manifestly  
21 incompatible with the intent of the parties as expressed in this Contract, the term:

22 (a) “Calendar Year” shall mean the period January 1 through December 31,  
23 both dates inclusive;

24 (b) “Charges” shall mean the payments required by Federal Reclamation law  
25 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
26 annually by the Contracting Officer pursuant to this Contract;

1 (c) "Condition of Shortage" shall mean a condition respecting the Project  
2 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
3 Contract Total;

4 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly  
5 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
6 or regulation;

7 (e) "Contract Total" shall mean the maximum amount of water to which the  
8 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

9 (f) "Contractor's Service Area" shall mean the area to which the Contractor is  
10 permitted to provide Project Water under this Contract as described in Exhibits "A" and "A1"  
11 attached hereto, which may be modified from time to time in accordance with Article 35 of this  
12 Contract without amendment of this Contract;

13 (f.1) "El Dorado Hills Area" shall mean the area to which the Contractor is  
14 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
15 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
16 without amendment of this Contract;

17 (f.2) "Lakes Hills Estates Area" shall mean the area to which the Contractor is  
18 permitted to provide Project Water under this Contract as described in Exhibit "A1" attached  
19 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
20 without amendment of this Contract;

21 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
22 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

23 (h-i) Omitted;

24 (j) "Full Cost Rate" shall mean an annual rate, determined by the Contracting  
25 Officer that amortizes the expenditures for construction properly allocable to the Project  
26 Irrigation or M&I functions, as appropriate, of facilities in service including operation and

1 maintenance deficits funded, less payments, over such periods as may be required under Federal  
2 Reclamation law, or applicable contract provisions. Interest will accrue on both the construction  
3 expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date,  
4 or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be  
5 calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The full-cost rate  
6 includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of  
7 the Rules and Regulations for the RRA;

8 (k-l) Omitted;

9 (m) "Irrigation Water" shall mean water made available from the Project that  
10 is used primarily in the production of agricultural crops or livestock, including domestic use  
11 incidental thereto, and watering of livestock;

12 (n) Omitted;

13 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other  
14 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for  
15 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)  
16 which are kept for personal enjoyment or water delivered to land holdings operated in units of  
17 less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting  
18 Officer that the use of water delivered to any such landholding is a use described in subdivision  
19 (m) of this Article;

20 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
21 the delivery of M&I Water;

22 (q) "Operation and Maintenance" or "O&M" shall mean normal and  
23 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
24 maintenance of Project facilities;

25 (r) Omitted;

26 (s) "Project" shall mean the Central Valley Project owned by the United



1 States and managed by the Department of the Interior, Bureau of Reclamation;

2 (t) "Project Contractors" shall mean all parties who have water service  
3 contracts for Project Water from the Project with the United States pursuant to Federal  
4 Reclamation law;

5 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
6 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
7 accordance with the terms and conditions of water rights acquired pursuant to California law;

8 (v) "Rates" shall mean the payments determined annually by the Contracting  
9 Officer in accordance with the then current applicable water ratesetting policies for the Project,  
10 as described in subdivision (a) of Article 7 of this Contract;

11 (w) "Recent Historic Average" shall mean the most recent five (5)-year  
12 average of the final forecast of Water Made Available to the Contractor pursuant to this Contract  
13 or its preceding contract(s);

14 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
15 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
16 through any agency of the Department of the Interior;

17 (y) "Tiered Pricing Component" shall be the incremental amount to be paid  
18 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

19 (z) "Water Delivered" or "Delivered Water" shall mean Project Water  
20 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
21 Officer;

22 (aa) "Water Made Available" shall mean the estimated amount of Project  
23 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
24 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

25 (bb) "Water Scheduled" shall mean Project Water made available to the  
26 Contractor for which times and quantities for delivery have been established by the Contractor

1 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

2 (cc) "Year" shall mean the period from and including March 1 of each  
3 Calendar Year through the last day of February of the following Calendar Year.

4 TERM OF CONTRACT

5 2. (a) This Contract shall be effective March 1, 200\_, through February 28(29),  
6 20\_\_\_. In the event the Contractor wishes to renew the Contract beyond February 28(29), 20\_\_\_,  
7 the Contractor shall submit a request for renewal in writing to the Contracting Officer no later  
8 than two (2) years prior to the date this Contract expires.

9 (b) Omitted.

10 (c) This Contract shall be renewed for a period of \_\_\_\_ years<sup>1</sup> and thereafter  
11 shall be renewed for successive periods of up to forty (40) years each, which periods shall be  
12 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually  
13 agreeable to the parties and consistent with federal and state law. The Contractor shall be  
14 afforded the opportunity to comment to the Contracting Officer on the proposed adoption and  
15 application of any revised Reclamation-wide policy applicable to the delivery of Project M&I  
16 Water that would limit the term of any subsequent renewal contract with the Contractor for the  
17 furnishing of M&I Water to less than forty (40) years.

18 (d) The Contracting Officer shall make a determination 10 years after the date  
19 of execution of this Contract, and every 5 years thereafter during the term of this Contract, of  
20 whether a conversion to a contract under subsection 9(c)(1) of Section 9 of the Reclamation  
21 Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the  
22 term of this contract, all authorized Project construction expected to occur will have occurred,  
23 and on that basis the Contracting Officer agrees upon such completion to allocate all costs that  
24 are properly assignable to the Contractor, and agrees further that, at any time after such  
25 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this

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<sup>1</sup> To be completed consistent with the term agreed upon with other CVP M&I Long-Term Renewal Contracts.

Contract shall, at the request of the Contractor, be converted to a contract under said subsection (c)(1) of Section 9, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the condition set out above, conversion to a contract under said subsection (c)(1) of Section 9.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 6,500 acre-feet of water for M&I purposes in the El Dorado Hills Area, and 50 acre-feet of water for M&I purposes in the Lake Hills Estates Area. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Central Valley Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the

1 PEIS projected that the Contract Total set forth in this Contract will not be available to the  
2 Contractor in many years. During the most recent five (5) years, the Recent Historic Average of  
3 water made available to the Contractor in the El Dorado Hills Area was \_\_\_\_ acre-feet, and \_\_\_\_  
4 acre-feet in the Lake Hills Estates Area. Nothing in subdivision (b) of this Article shall affect the  
5 rights and obligations of the parties under any provision of this Contract.

6 (c) The Contractor shall utilize the Project Water in accordance with all  
7 applicable legal requirements.

8 (d) The Contractor shall make reasonable and beneficial use of all Project  
9 Water or other water furnished pursuant to this Contract. Ground-water recharge programs  
10 (direct, indirect, or in lieu), ground-water banking programs, surface water storage programs, and  
11 other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
12 conducted within the Contractor's Service Area which are consistent with applicable State law  
13 and result in use consistent with Federal Reclamation law will be allowed; Provided, That any  
14 direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan  
15 submitted pursuant to Article 26 of this Contract; Provided, further, That such Water  
16 Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so  
17 that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable  
18 for such uses and in compliance with Federal Reclamation Law. Ground-water recharge  
19 programs, ground-water banking programs, surface water storage programs, and other similar  
20 programs utilizing Project Water or other water furnished pursuant to this Contract conducted  
21 outside the Contractor's Service Area may be permitted upon written approval of the Contracting  
22 Officer, which approval will be based upon environmental documentation, Project Water rights,  
23 and Project operational concerns. The Contracting Officer will address such concerns in  
24 regulations, policies, or guidelines.

25 (e) The Contractor shall comply with requirements applicable to the  
26 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution

1 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as  
2 amended, that are within the Contractor's legal authority to implement. The El Dorado Hills and  
3 Lake Hills Estates contracts, which evidence in excess of \_\_\_\_ years of diversions for municipal  
4 and industrial purposes of the quantities of water provided in subdivision (a) of Article 3 of this  
5 Contract, will be considered in developing an appropriate baseline for the Biological Assessment  
6 prepared pursuant to the Endangered Species Act, and any other needed environmental review.  
7 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial  
8 relief in a court of competent jurisdiction with respect to any biological opinion or other  
9 environmental documentation referred to in this Article.

10 (f) Following the declaration of Water Made Available under Article 4 of this  
11 Contact, the Contracting Officer will make a determination whether Project Water, or other  
12 water available to the Project, can be made available to the Contractor in addition to the Contract  
13 Total under Article 3 of this Contract during the Year without adversely impacting other Project  
14 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
15 Contractor prior to making such a determination. If the Contracting Officer determines that  
16 Project Water, or other water available to the Project, can be made available to the Contractor,  
17 the Contracting Officer will announce the availability of such water and shall so notify the  
18 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor  
19 and other Project Contractors capable of taking such water to determine the most equitable and  
20 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such  
21 water, the Contracting Officer shall make such water available to the Contractor in accordance  
22 with applicable statutes, regulations, guidelines, and policies.

23 (g) The Contractor may request permission to reschedule for use during the  
24 subsequent Year some or all of the Water Made Available to the Contractor during the current  
25 Year referred to as "carryover." The Contractor may request permission to use during the  
26 current Year a quantity of Project Water which may be made available by the United States to

1 the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s  
2 written approval may permit such uses in accordance with applicable statutes, regulations,  
3 guidelines, and policies.

4 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
5 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract  
6 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this  
7 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all  
8 of its obligations under this Contract and any renewals thereof. Nothing in the preceding  
9 sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or  
10 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal  
11 contracts.

12 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
13 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
14 Contract upon written approval by the Contracting Officer in accordance with the terms and  
15 conditions of such approval.

16 (j) The Contracting Officer shall make reasonable efforts to protect the water  
17 rights necessary for the Project and to provide the water available under this Contract. The  
18 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
19 extent permitted by law, in administrative proceedings related to the Project Water rights;  
20 Provided, however, That the Contracting Officer retains the right to object to the substance of the  
21 Contractor’s position in such a proceeding; Provided further, that in such proceedings the  
22 Contracting Officer shall recognize the Contractor has a legal right under the terms of this  
23 Contract to use Project Water.

24 TIME FOR DELIVERY OF WATER

25 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer  
26 shall announce the Contracting Officer’s expected declaration of the Water Made Available.

1 Such declaration of Project operations will be expressed in terms of both Water Made Available  
2 and the Recent Historic Average and will be updated monthly, and more frequently if necessary,  
3 based on then-current operational and hydrologic conditions and a new declaration with changes,  
4 if any, to the Water Made Available will be made. The Contracting Officer shall provide  
5 forecasts of Project operations and the basis of the estimate, with relevant supporting  
6 information, upon the written request of the Contractor. Concurrently with the declaration of the  
7 Water Made Available, the Contracting Officer shall provide the Contractor with the updated  
8 Recent Historic Average.

9 (b) On or before each March 1 and at such other times as necessary, the  
10 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
11 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
12 United States to the Contractor pursuant to this Contract for the Year commencing on such  
13 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
14 according to the approved schedule for the Year commencing on such March 1.

15 (c) The Contractor shall not schedule Project Water in excess of the quantity  
16 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
17 Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract  
18 during any Year.

19 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
20 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
21 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
22 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
23 time prior to the date(s) on which the requested change(s) is/are to be implemented.

24 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

25 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
26 Contract shall be delivered to the Contractor at the El Dorado Hills point of diversion and any

1 additional point or points of delivery either on Project facilities or another location or locations  
2 mutually agreed to in writing by the Contracting Officer and the Contractor.

3 (b) Omitted.

4 (c) The Contractor shall not deliver Project Water to land outside the  
5 Contractor's Service Area unless approved in advance by the Contracting Officer.

6 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
7 measured and recorded with equipment furnished, installed, operated, and maintained by the  
8 United States, or other appropriate entity as designated by the Contracting Officer (hereafter  
9 "other appropriate entity") at the point or points of delivery established pursuant to subdivision  
10 (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall  
11 investigate, or cause to be investigated, the accuracy of such measurements and shall take any  
12 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
13 measurements have not been made, the Contracting Officer shall consult with the Contractor  
14 prior to making a final determination of the quantity delivered for that period of time.

15 (e) The Contracting Officer shall not be responsible for the control, carriage,  
16 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
17 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor  
18 shall indemnify the United States, its officers, employees, agents, and assigns on account of  
19 damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
20 including property damage, personal injury, or death arising out of or connected with the control,  
21 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery  
22 points, except for any damage or claim arising out of (i) acts or omissions of the Contracting  
23 Officer or any of its officers, employees, agents, or assigns with the intent of creating the  
24 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
25 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or  
26 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a



malfunction of facilities owned and/or operated by the United States.

MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The Contractor shall ensure that, unless the Contractor establishes an alternative measurement program satisfactory to the Contracting Officer, all surface water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 26.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and necessary modifications,

1 if any, of the measuring devices or water measuring methods identified in the Contractor's report  
2 and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If  
3 the Contracting Officer notifies the Contractor that the measuring devices or methods are  
4 inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,  
5 negotiate in good faith the earliest practicable date by which the Contractor shall modify said  
6 measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
7 compliance with subdivision (a) of this Article.

8 (c) All new surface water delivery systems installed within the Contractor's  
9 Service Area after the effective date of this Contract shall also comply with the measurement  
10 provisions described in subdivision (a) of this Article.

11 (d) The Contractor shall inform the Contracting Officer and the State of  
12 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
13 within the Contractor's Service Area during the previous Year.

14 (e) The Contractor shall inform the Contracting Officer on or before the  
15 twentieth (20<sup>th</sup>) calendar day of each month of the quantity of M&I Water taken during the  
16 preceding month.

#### 17 RATES AND METHOD OF PAYMENT FOR WATER

18 7. (a) The Contractor shall pay the United States as provided in this Article for  
19 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in  
20 accordance with (i) the Secretary's then-existing ratesetting policy for M&I Water. Such  
21 ratesetting policies shall be amended, modified, or superseded only through a public notice and  
22 comment procedure; (ii) applicable Federal Reclamation law and associated rules and  
23 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be  
24 made by cash transaction, wire transfer, or any other mechanism as may be agreed to in writing  
25 by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
26 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit

1 “B,” as may be revised annually.

2 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
3 and Tiered Pricing Components as follows:

4 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
5 provide the Contractor an estimate of the Charges for Project Water that will be applied  
6 to the period October 1, of the current Calendar Year, through September 30, of the  
7 following Calendar Year, and the basis for such estimate. The Contractor shall be  
8 allowed not less than two (2) months to review and comment on such estimates. On or  
9 before September 15 of each Calendar Year, the Contracting Officer shall notify the  
10 Contractor in writing of the Charges to be in effect during the period October 1 of the  
11 current Calendar Year, through September 30, of the following Calendar Year, and such  
12 notification shall revise Exhibit “B.”

13 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
14 shall make available to the Contractor an estimate of the Rates and Tiered Pricing  
15 Components for Project Water for the following Year and the computations and cost  
16 allocations upon which those Rates are based. The Contractor shall be allowed not less  
17 than two (2) months to review and comment on such computations and cost allocations.  
18 By December 31 of each Calendar Year, the Contracting Officer shall provide the  
19 Contractor with the final Rates and Tiered Pricing Components to be in effect for the  
20 upcoming Year, and such notification shall revise Exhibit “B.”

21 (c) At the time the Contractor submits the initial schedule for the delivery of  
22 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
23 Contractor shall make an advance payment to the United States equal to the total amount payable  
24 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
25 scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of  
26 the Year. Before the end of the first month and before the end of each calendar month thereafter,

1 the Contractor shall make an advance payment to the United States, at the Rate(s) set under  
2 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
3 during the second month immediately following. Adjustments between advance payments for  
4 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
5 the following month; Provided, That any revised schedule submitted by the Contractor pursuant  
6 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
7 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
8 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such  
9 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
10 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
11 additional Project Water shall be delivered to the Contractor unless and until an advance  
12 payment at the Rates then in effect for such additional Project Water is made. Final adjustment  
13 between the advance payments for the Water Scheduled and payments for the quantities of Water  
14 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
15 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water  
16 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by  
17 the last day of February.

18 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
19 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
20 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
21 month of delivery. The payments shall be consistent with the quantities of Irrigation Water and  
22 M&I Water Delivered as shown in the water delivery report for the subject month prepared by  
23 the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the  
24 Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges  
25 and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment  
26 or underpayment of Charges shall be made through the adjustment of payments due to the United

1 States for Charges for the next month. Any amount to be paid for past due payment of Charges  
2 and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

3 (e) The Contractor shall pay for any Water Delivered under subdivision (d),  
4 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
5 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
6 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
7 Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision  
8 (a) of this Article.

9 (f) Payments to be made by the Contractor to the United States under this  
10 Contract may be paid from any revenues available to the Contractor.

11 (g) All revenues received by the United States from the Contractor relating to  
12 the delivery of Project Water or the delivery of non-Project water through Project facilities shall  
13 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
14 regulations, and the then current Project ratesetting policies for M&I Water.

15 (h) The Contracting Officer shall keep its accounts pertaining to the  
16 administration of the financial terms and conditions of its long-term contracts, in accordance  
17 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
18 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
19 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
20 disposition of all Project and Contractor revenues, and a summary of all water delivery  
21 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
22 to resolve any discrepancies or disputes relating to accountings, reports, or information.

23 (i) The parties acknowledge and agree that the efficient administration of this  
24 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
25 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,  
26 and/or for making and allocating payments, other than those set forth in this Article may be in

1 the mutual best interest of the parties, it is expressly agreed that the parties may enter into  
2 agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
3 this Contract is in effect without amending this Contract.

4 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
5 exceed eighty (80%) percent of the Contract Total, then before the end of the month  
6 following the month of delivery the Contractor shall make an additional payment to the  
7 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing  
8 Component for the amount of Water Delivered in excess of eighty (80%) percent of the  
9 Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall  
10 equal the one-half of the difference between the Rate established under subdivision (a) of  
11 this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
12 whichever is applicable. The Tiered Pricing Component for the amount of Water  
13 Delivered which exceeds ninety (90%) percent of the Contract Total shall equal the  
14 difference between (i) the Rate established under subdivision (a) of this Article and (ii)  
15 the M&I Full Cost Water Rate.

16 (2) Omitted.

17 (3) For purposes of determining the applicability of the Tiered Pricing  
18 Components pursuant to this Article, Water Delivered shall include Project Water that the  
19 Contractor transfers to others but shall not include Project Water transferred and  
20 delivered to the Contractor.

21 (k) For the term of this Contract, Rates under the respective ratesetting  
22 policies will be established to recover only reimbursable "operation and maintenance" (including  
23 any deficits) and capital costs of the Project, as those terms are used in the then-current Project  
24 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is  
25 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in  
26 practices which implement the Contracting Officer's ratesetting policies will not be implemented

1 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
2 need, and impact of the proposed change.

3 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
4 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
5 adjusted upward or downward to reflect the changed costs, (if any), incurred by the Contracting  
6 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in  
7 accordance with the then applicable CVP Ratesetting Policy.

8 (m) Omitted.

9 (n) The Contractor asserts that it is not legally obligated to repay any Central  
10 Valley Project deficits or deficit related interest charges claimed by the United States to have  
11 accrued as of the date of this Contract. By entering into this Contract, the Contractor does not  
12 waive any legal rights or remedies that it may have with respect to such disputed issues.  
13 Notwithstanding the execution of this Contract, and payments made hereunder, the Contractor  
14 may challenge in the appropriate administrative or judicial forums: (1) the computation, or  
15 imposition of any deficit charges accruing during the term of the El Dorado Hills and Lake Hills  
16 Estates contracts; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit  
17 charges or interest in the Rates; (4) the application by the United States of payments made by the  
18 Contractor under its El Dorado Hills and Lake Hills Estates contracts; and (5) the application of  
19 such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled  
20 to the benefit of any administrative or judicial ruling in favor of any other Central Valley Project  
21 M&I contractor on any of these issues, provided that, the basis for such ruling is applicable to the  
22 Contractor.

23 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

24 8. Omitted.

25 SALES, TRANSFERS, OR EXCHANGES OF WATER

26 9. (a) The right to receive Project Water provided for in this Contract may be

1 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
2 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
3 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
4 Water under this Contract may take place without the prior written approval of the Contracting  
5 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
6 exchanges shall be approved absent all appropriate environmental documentation, including but  
7 not limited to documents prepared pursuant to the National Environmental Policy Act and the  
8 Endangered Species Act. Such environmental documentation should include, as appropriate, an  
9 analysis of ground-water impacts and economic and social effects, including environmental  
10 justice, of the proposed water transfers on both the transferor and transferee.

11 (b) In order to facilitate efficient water management by means of water  
12 transfers of the type historically carried out among Project Contractors located within the same  
13 geographical area and to allow the Contractor to participate in an accelerated water transfer  
14 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,  
15 all necessary environmental documentation including, but not limited to, documents prepared  
16 pursuant to the National Environmental Policy Act and the Endangered Species Act analyzing  
17 annual transfers within such geographical areas and the Contracting Officer shall determine  
18 whether such transfers comply with applicable law. Following the completion of the  
19 environmental documentation, such transfers addressed in such documentation shall be  
20 conducted with advance notice to the Contracting Officer, but shall not require prior written  
21 approval by the Contracting Officer. Such environmental documentation and the Contracting  
22 Officer's compliance determination shall be reviewed every five (5) years and updated, as  
23 necessary, prior to the expiration of the then-existing five (5)-year period. All subsequent  
24 environmental documentation shall include an alternative to evaluate not less than the quantity of  
25 Project Water historically transferred within the same geographical area.

26 (c) For a water transfer to qualify under subdivision (b) of this Article, such



1 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3)  
2 years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not  
3 lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water  
4 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a  
5 willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
6 construction or modifications to facilities and be between existing Project Contractors and/or the  
7 Contractor and the United States, Department of the Interior; and (v) comply with all applicable  
8 Federal, State, and local or tribal laws and requirements imposed for protection of the  
9 environment and Indian Trust Assets, as defined under Federal law.

10 APPLICATION OF PAYMENTS AND ADJUSTMENTS

11 10. (a) The amount of any overpayment by the Contractor of the Contractor's  
12 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
13 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
14 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
15 of a refund, any amount of such overpayment at the option of the Contractor, may be credited  
16 against amounts to become due to the United States by the Contractor. With respect to  
17 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
18 anyone having or claiming to have the right to the use of any of the Project Water supply  
19 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
20 days of the Contracting Officer obtaining direction as to how to credit or refund such  
21 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
22 Year in which the overpayment was made.

23 (b) All advances for miscellaneous costs incurred for work requested by the  
24 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs  
25 when the work has been completed. If the advances exceed the actual costs incurred, the  
26 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's

1 advances, the Contractor will be billed for the additional costs pursuant to Article 25 of this  
2 Contract.

3 TEMPORARY REDUCTIONS--RETURN FLOWS

4 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
5 requirements of Federal law; and (ii) the obligations of the United States under existing  
6 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting  
7 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as  
8 provided in this Contract.

9 (b) The Contracting Officer may temporarily discontinue or reduce the  
10 quantity of Water Delivered to the Contractor as herein provided for the purposes of  
11 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or  
12 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
13 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary  
14 discontinuance or reduction, except in case of emergency, in which case no notice need be given;  
15 Provided, That the United States shall use its best efforts to avoid any discontinuance or  
16 reduction in such service. Upon resumption of service after such reduction or discontinuance,  
17 and if requested by the Contractor, the United States will, if possible, deliver the quantity of  
18 Project Water which would have been delivered hereunder in the absence of such discontinuance  
19 or reduction.

20 (c) The United States reserves the right to all seepage and return flow water  
21 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
22 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
23 the United States any right as seepage or return flow being put to reasonable and beneficial use  
24 pursuant to this Contract within the Contractor's Service Area by the Contractor or those  
25 claiming by, through, or under the Contractor.

1                    CONSTRAINTS ON THE AVAILABILITY OF WATER

2            12.    (a)    In its operation of the Project, the Contracting Officer will use all  
3 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
4 available to the Contractor pursuant to this long-term renewal Contract. In the event the  
5 Contracting Officer determines that a Condition of Shortage appears probable, the Contracting  
6 Officer will notify the Contractor of said determination as soon as practicable.

7            (b)    If there is a Condition of Shortage because of errors in physical operations  
8 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
9 actions taken by the Contracting Officer to meet legal obligations then, except as provided in  
10 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or  
11 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

12            (c)    Omitted.

13            (d)    Project Water furnished under this Contract will be allocated in  
14 accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be  
15 amended, modified, or superseded only through a public notice and comment procedure.

16                    UNAVOIDABLE GROUNDWATER PERCOLATION

17            13.    Omitted.

18                    RULES AND REGULATIONS

19            14.    The parties agree that the delivery of Water or use of Federal facilities pursuant to  
20 this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules  
21 and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

22                    WATER AND AIR POLLUTION CONTROL

23            15.    The Contractor, in carrying out this Contract, shall comply with all applicable  
24 water and air pollution laws and regulations of the United States and the State of California, and  
25 shall obtain all required permits or licenses from the appropriate Federal, State, or local  
26 authorities.

QUALITY OF WATER

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be responsible for compliance with all State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor's Service Area.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

17. (a) Omitted.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States, may be stored, conveyed, and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, subject to

1 payment to the United States of an appropriate rate as determined by the CVP Ratesetting  
2 Policy as amended, modified, or superceded from time to time. In addition, if electrical  
3 power is required to pump non-Project water through the facilities, the Contractor shall  
4 be responsible for obtaining the necessary power and paying the necessary charges  
5 therefor.

6 (2) Delivery of such non-Project water in and through Project facilities  
7 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
8 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of  
9 water available to other Project water service contractors; (iii) interfere with the delivery  
10 of contractual water entitlements to any other Project water service contractors; or (iv)  
11 interfere with the physical maintenance of the Project facilities.

12 (3) The United States shall not be responsible for control, care, or  
13 distribution of the non-Project water before it is introduced into or after it is delivered  
14 from the Project facilities. The Contractor hereby releases and agrees to defend and  
15 indemnify the United States and their respective officers, agents, and employees, from  
16 any claim for damage to persons or property, direct or indirect, arising out of or relating  
17 to the Contractor's or its officers', employees', agents' or assigns', act of (i) extracting or  
18 diverting non-Project water from any source, or (ii) diverting such non-Project water into  
19 Project facilities.

20 (4) Diversion of such non-Project water into Project facilities shall be  
21 consistent with all applicable laws, and if involving groundwater, consistent with any  
22 applicable ground-water management plan for the area from which it was extracted.

23 (5) After Project purposes are met, as determined by the Contracting  
24 Officer, the United States and the Contractor shall share priority to utilize the remaining  
25 capacity of the facilities declared to be available by the Contracting Officer for  
26 conveyance and transportation of non-Project water prior to any such remaining capacity

1 being made available to non-Project contractors.

2 OPINIONS AND DETERMINATIONS

3 18. (a) Where the terms of this Contract provide for actions to be based upon the  
4 opinion or determination of either party to this Contract, said terms shall not be construed as  
5 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
6 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
7 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
8 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
9 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is  
10 intended to or shall affect or alter the standard of judicial review applicable under Federal law to  
11 any opinion or determination implementing a specific provision of Federal law embodied in  
12 statute or regulation.

13 (b) The Contracting Officer shall have the right to make determinations  
14 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
15 laws of the United States and of the State of California, and the rules and regulations  
16 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
17 with the Contractor to the extent reasonably practicable.

18 COORDINATION AND COOPERATION

19 19. (a) In order to further their mutual goals and objectives, the Contracting  
20 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
21 with other affected Project Contractors, in order to improve the operation and management of the  
22 Project. The communication, coordination, and cooperation regarding operations and  
23 management shall include, but not be limited to, any action which will or may materially affect  
24 the quantity or quality of Project Water supply, the allocation of Project Water supply, and  
25 Project financial matters including, but not limited to, budget issues. The communication,  
26 coordination, and cooperation provided for hereunder shall extend to all provisions of this

1 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,  
2 and determinations to be made by the respective party.

3 (b) Within one hundred twenty (120) days following the effective date of this  
4 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall  
5 arrange to meet with interested Project Contractors to develop a mutually agreeable, written  
6 Project-wide process, which may be amended as necessary separate and apart from this Contract.  
7 The goal of this process shall be to provide, to the extent practicable, the means of mutual  
8 communication and interaction regarding significant decisions concerning Project operation and  
9 management on a real-time basis.

10 (c) In light of the factors referred to in subdivision (b) of Article 3 of this  
11 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this  
12 intent:

13 (1) The Contracting Officer will, at the request of the Contractor,  
14 assist in the development of integrated resource management plans for the Contractor.  
15 Further, the Contracting Officer will, as appropriate, seek authorizations for  
16 implementation of partnerships to improve water supply, water quality, and reliability.

17 (2) The Secretary will, as appropriate, pursue program and project  
18 implementation and authorization in coordination with Project Contractors to improve the  
19 water supply, water quality, and reliability of the Project for all Project purposes.

20 (3) The Secretary will coordinate with Project Contractors and the  
21 State of California to seek improved water resource management.

22 (4) The Secretary will coordinate actions of agencies within the  
23 Department of the Interior that may impact the availability of water for Project purposes.

24 (5) The Contracting Officer shall periodically, but not less than  
25 annually, hold division level meetings to discuss Project operations, division level water  
26 management activities, and other issues as appropriate.

(d) Without limiting the contractual obligations of the Contracting Officer under the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities.

#### CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.



1 (b) The Contractor will, in all solicitations or advertisements for employees  
2 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
3 consideration for employment without discrimination because of race, color, religion, sex, or  
4 national origin.

5 (c) The Contractor will send to each labor union or representative of workers  
6 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
7 to be provided by the Contracting Officer, advising the said labor union or workers'  
8 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of  
9 September 24, 1965, and shall post copies of the notice in conspicuous places available to  
10 employees and applicants for employment.

11  
12 (d) The Contractor will comply with all provisions of Executive Order  
13 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders  
14 of the Secretary of Labor.

15 (e) The Contractor will furnish all information and reports required by said  
16 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
17 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting  
18 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with  
19 such rules, regulations, and orders.

20 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
21 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
22 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
23 ineligible for further Government contracts in accordance with procedures authorized in said  
24 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
25 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
26 otherwise provided by law.

27 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
28 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
29 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
30 provisions will be binding upon each subcontractor or vendor. The Contractor will take such  
31 action with respect to any subcontract or purchase order as may be directed by the Secretary of  
32 Labor as a means of enforcing such provisions, including sanctions for noncompliance:  
33 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,  
34 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request  
35 the United States to enter into such litigation to protect the interests of the United States.

36 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

37 22. (a) The obligation of the Contractor to pay the United States as provided in  
38 this Contract is a general obligation of the Contractor notwithstanding the manner in which the

obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

(c) With respect to subdivision (b) of this Article, the Contractor shall have no obligation to require advance payment for water rates which it levies.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

#### PRIVACY ACT COMPLIANCE

24. Omitted.

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a

1 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
2 specific items of direct cost incurred by the United States for work requested by the Contractor  
3 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
4 Reclamation policies and procedures. All such amounts referred to in this Article shall not  
5 exceed the amount agreed to in writing in advance by the Contractor. This Article shall not  
6 apply to costs for routine contract administration.

7 WATER CONSERVATION

8 26. (a) Prior to the delivery of water provided from or conveyed through  
9 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
10 shall be implementing an effective water conservation and efficiency program based on the  
11 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
12 the conservation and efficiency criteria for evaluating water conservation plans established  
13 under Federal law. The water conservation and efficiency program shall contain definite water  
14 conservation objectives, appropriate economically feasible water conservation measures, and  
15 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
16 Contract shall be contingent upon the Contractor's continued implementation of such water  
17 conservation program. In the event the Contractor's water conservation plan or any revised water  
18 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not  
19 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which  
20 the Contracting Officer determines are beyond the control of the Contractor, water deliveries  
21 shall be made under this Contract so long as the Contractor diligently works with the Contracting  
22 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
23 immediately begins implementing its water conservation and efficiency program in accordance  
24 with the time schedules therein.

25 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
26 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the

Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

(c) The Contractor shall submit to the Contracting Officer a report on the status of its implementation of the water conservation plan on the reporting dates specified in the then existing conservation and efficiency criteria established under Federal law.

(d) At five (5)-year intervals, the Contractor shall revise its water conservation plan to reflect the then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

(e) If the Contractor is engaged in direct ground-water recharge, such activity shall be described in the Contractor's water conservation plan.

#### EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

#### OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

28. Omitted.

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of

1 the United States under this Contract shall be contingent upon appropriation or allotment of  
2 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
3 obligations under this Contract. No liability shall accrue to the United States in case funds are  
4 not appropriated or allotted.

5 BOOKS, RECORDS, AND REPORTS

6 30. (a) The Contractor shall establish and maintain accounts and other books and  
7 records pertaining to administration of the terms and conditions of this Contract, including: the  
8 Contractor's financial transactions, water supply data, and Project land and right-of-way  
9 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
10 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
11 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
12 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
13 Contract shall have the right during office hours to examine and make copies of the other party's  
14 books and records relating to matters covered by this Contract.

15  
16 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
17 books, records, or other information shall be requested from the Contractor by the Contracting  
18 Officer unless such books, records, or information are reasonably related to the administration or  
19 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
20 time within which to provide the requested books, records, or information.

21 (c) At such time as the Contractor provides information to the Contracting  
22 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided  
23 to the Operating Non-Federal Entity.

24 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

25 31. (a) The provisions of this Contract shall apply to and bind the successors and  
26 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
27 therein shall be valid until approved in writing by the Contracting Officer.

28 (b) The assignment of any right or interest in this Contract by either party  
29 shall not interfere with the rights or obligations of the other party to this Contract absent the  
30 written concurrence of said other party.

31 (c) The Contracting Officer shall not unreasonably condition or withhold his  
32 approval of any proposed assignment.

33 SEVERABILITY

34 32. In the event that a person or entity who is neither (i) a party to a Project contract,  
35 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)

1 an association or other form of organization whose primary function is to represent parties to  
2 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
3 enforceability of a provision included in this Contract and said person, entity, association, or  
4 organization obtains a final court decision holding that such provision is legally invalid or  
5 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
6 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
7 such final court decision identify by mutual agreement the provisions in this Contract which  
8 must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate  
9 revision(s). The time periods specified above may be extended by mutual agreement of the  
10 parties. Pending the completion of the actions designated above, to the extent it can do so  
11 without violating any applicable provisions of law, the United States shall continue to make the  
12 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
13 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
14 final court decision.

#### 15 RESOLUTION OF DISPUTES

16 33. Should any dispute arise concerning any provisions of this Contract, or the  
17 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
18 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
19 Officer referring any matter to Department of Justice, the party shall provide to the other party  
20 thirty (30) days' written notice of the intent to take such action; Provided, That such notice shall  
21 not be required where a delay in commencing an action would prejudice the interests of the party  
22 that intends to file suit. During the thirty (30)-day notice period, the Contractor and the  
23 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
24 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
25 Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

36. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction.

## NOTICES

37. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the El Dorado Irrigation District, 2890 Mosquito Road, Placerville, California 95667. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

## CONFIRMATION OF CONTRACT

38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.



1                   IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
2 the day and year first above written.

3                   THE UNITED STATES OF AMERICA

4                   By: \_\_\_\_\_  
5                   Regional Director, Mid-Pacific Region  
6                   Bureau of Reclamation

7                   EL DORADO IRRIGATION DISTRICT

8                   By: \_\_\_\_\_  
9                   General Manager  
                  El Dorado Irrigation District

10           Attest:

11           By: \_\_\_\_\_  
12           Secretary  
              El Dorado Irrigation District

R.O. Draft 09/09-2003  
Contract No. \_\_\_\_\_ - LTR1

EXHIBIT A

El Dorado Irrigation District  
El Dorado Hills Area

R.O. Draft 09/09-2003  
Contract No. \_\_\_\_\_ - LTR1

EXHIBIT A1

El Dorado Irrigation District  
Lake Hills Estates Area

EXHIBIT B  
2003 Water Rates and Charges  
CONTRACT NUMBER: \_\_\_\_\_ – LTR1  
EL DORADO IRRIGATION DISTRICT

2003 Rates Per Acre-Foot  
M&I

COST-OF-SERVICE (COS) RATE: \$23.88  
(1<sup>st</sup> Tier - ≤80% of Contract Total)

2ND TIER [>80% <90% of Contract Total] \$26.61  
(M&I Full Cost Rate + COS Rate/ 2)

3RD TIER [> 90% of Contract Total] \$29.34  
(M&I Full Cost Rate)

M&I FULL COST RATE:  
Interest rates used in the calculation of the M&I Full Cost Rate  
shall comply with the Interest Rate methodology contained in  
Section 202 (3) (B) and (C) of the Reclamation Reform Act  
of October 12, 1982 (96 Stat. 1263), as amended: \$29.34

SURCHARGES UNDER P.L. 102-575 TO  
RESTORATION FUND\*  
Restoration Payments [3407(d)(2)(A)] \$15.38

\* The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30).

Note: Additional detail of rate components is available on the Internet at  
<http://www.mp.usbr.gov/cvpwaterrates/>.